UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,500	06/04/2001	John E. Ware	QMET-201	5112

24972	7590	05/18/2006

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EXAMINER
BLECK, CAROLYN M

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	09/873,500	WARE ET AL.
	Examiner	**Art Unit**	
	Carolyn M. Bleck	3626	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>27 April 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>*27 April 2006*</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

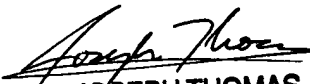   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See continuation sheet</u>.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER

Continuation of 11. The request for reconsideration has been considered but does not place the application in condition for allowance because:

Applicant argues that Ware does not teach generating a customized test based on patient's characteristics and selected health domain, and dynamically modifying the generated customized test if an estimated confidence level is outside a threshold. In response, the Examiner respectfully submits that Ware teaches these features.

As per the recitation of "generating a customized test based on patient's characteristics and selected health domain, and dynamically modifying the generated customized test," Ware teaches generating a customized test or dynamic assessment based on whether a patient is a headache sufferer (reads on "patient characteristics) (page 12, col. 3). Ware discloses dynamically modifying a test based on the immediately prior question (see Figure 3, page. 12, col. 1). Ware discloses the questionnaire or test pertaining to severity of headaches (pg. 12 col. 3 par. 1), general overall health (pg. 12 col. 3 par. 1), effectiveness of treatment, self-perceived status (pg. 12, col. 1-3 see mental health and headaches discussion, pg. 13 col. 1-2 see mental health discussion). These are forms of "health domains."

As per the recitation of "dynamically modifying the generated customized test if an estimated confidence level is outside a threshold." Ware discloses the following steps in Figure 3 for dynamically giving a health assessment including step 2) select and present optimal scale item; step 3) score the response; 4a) re-estimating the score, step 4b) re-estimating the confidence interval, step 5) determining whether a stopping rule is satisfied and determining whether the score has been estimated within a preset standard of precision based on the confidence interval, wherein once the precision standard is met, the computer either begins assessing the next concept or ends the battery (considered to be a form of "threshold"), wherein the precision standard based on the confidence interval (i.e., the threshold) is set based on each patient's score (see page 12, col. 1-2). It appears that if the standard of precision is based on the confidence interval. It also appears that the confidence interval is patient specific and is re-estimated if a stopping rule is not satisfied. Thus, it appears that there is an estimated confidence interval and a threshold (i.e., stopping rule). Further, the test is modified based on whether the confidence interval and health score meet the stopping rule (see step 6 in Figure 3).

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